

US DEPARTMENT OF JUSTICE FIRES WARNING SHOT TO TAXPAYERS AND FINANCIAL INSTITUTIONS AFTER 'SWISS BANK PROGRAM'

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News

As the U.S. Department of Justice's Swiss Bank Program winds down, its pursuit of US taxpayers who evade their tax obligations, and the financial institutions who assist them, has been ramped up in other jurisdictions.

Last week, members of Herbert Smith Freehills' Global Corporate Crime and Investigations (CC&I) practice including: Global CC&I Head Kyle Wombolt; Partner John O'Donnell; and Senior Consultant Pamela Kiesselbach; joined together with specialist US tax law firm Sharp Partners P.A. to conduct a series of meetings and presentations in Singapore and Hong Kong.

These meetings addressed the impact that the DOJ's follow-the-money program will have on Singapore and Hong Kong financial institutions, their employees and customers.

The Justice Department is wrapping up its prosecution of over a dozen Swiss banks and its evaluation of more than 78 Swiss banks, who self-reported tax evasion to the DOJ through its 'Swiss Bank Program'. Through the prosecution of the banks and the Swiss Bank Program, the DOJ has collected over US\$5.6 billion.

More significantly, as part of the investigation, the DOJ received a treasure trove of previously secret customer account information provided by the participating Swiss banks. This information enables DOJ to trace accounts that left the Swiss banks and transferred assets to financial institutions elsewhere in the world - including in Singapore and Hong Kong - to avoid the US tax authorities (known as 'leavers').

Herbert Smith Freehills and Sharp Partners are advising clients on the risks associated with 'leavers' and the DOJ's likely approach when pursuing banks in Hong Kong and Singapore, especially in light of the information the DOJ has already collected, with a focus on which banks in the region have received high-risk funds.

Based upon the firms' experiences with the Swiss Bank Program, and with investigations in Asia, both Herbert Smith Freehills Partner Kyle Wombolt and William Sharp, founding partner of Sharp Partners, suggested ways to identify and remediate high risk 'leaver' clients.

Kyle Wombolt, Global Head of the firm's corporate crime and investigations practice, stated: "It is no secret that banks in Asia - especially Singapore and Hong Kong - are destinations for funds which US taxpayers do not want to disclose. The DOJ knows it and intends to find those taxpayers and the financial institutions that assisted them. So too, the local authorities know it and have expanded their anti-money laundering laws to ferret out suspicious funds. In light of the aggressive behaviour of the US and local authorities, US taxpayers and financial institutions are well-advised to take steps to understand their exposure to these laws and consider how best to proceed to protect their interest."

William Sharp, founding partner of Sharp Partners, stated: "Through our extensive experience representing clients in the Swiss Bank Program and what we have learned from DOJ attorneys responsible for the program, there is little doubt that the US authorities intend to follow the "leavers" flow of Swiss-source funds to locations such as Singapore and Hong Kong. The DOJ already has the "leavers" information in hand to readily identify to which countries and banks have received "leaver" funds. From a US law enforcement perspective, the Swiss Bank Program has been a great success and it should be no surprise that the DOJ will adapt the principles of that model throughout the world."

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